

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (admitted *pro hac vice*)

Christopher Marcus, P.C. (admitted *pro hac vice*)

Derek I. Hunter (admitted *pro hac vice*)

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Faxsimile: (212) 446-4900

edward.sassower@kirkland.com

christopher.marcus@kirkland.com

derek.hunter@kirkland.com

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

Co-Counsel for Debtors and

Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**SECOND SUPPLEMENTAL DECLARATION OF
CHRISTOPHER MARCUS IN SUPPORT OF THE DEBTORS'
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE RETENTION AND EMPLOYMENT OF KIRKLAND & ELLIS LLP
AND KIRKLAND & ELLIS INTERNATIONAL LLP AS ATTORNEYS FOR
THE DEBTORS AND DEBTORS IN POSSESSION EFFECTIVE AS OF JUNE 4, 2023**

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

I, Christopher Marcus, being duly sworn, state the following under penalty of perjury:

1. I am the president of Christopher Marcus, P.C., a partner of the law firm of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022, and a partner of Kirkland & Ellis International, LLP (together with Kirkland & Ellis LLP, collectively, “Kirkland”).² I am one of the lead attorneys from Kirkland working on the above captioned chapter 11 cases. I am a member in good standing of the Bar of the State of New York, and I have been admitted to practice in the United States District Court for the Southern District of New York. There are no disciplinary proceedings pending against me.

2. I submit this second supplemental declaration (this “Second Supplemental Declaration”) in further support of the *Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 4, 2023* [Docket No. 194] (the “Application”)

Background

3. On June 4, 2023 (the “Petition Date”), each of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed a petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On June 30, 2023, the Debtors filed the Application pursuant to sections 327(a) and 330 of the Bankruptcy Code, rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

4. My original declaration in support of the Application (the “Original Declaration”) was attached to the Application as Exhibit B.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

5. On July 18, 2023, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered the *Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 4, 2023* [Docket No. 289] (the “Retention Order”).

6. On September 1, 2023, the Debtors filed the *Supplemental Declaration of Christopher Marcus in Support of the Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP as Attorneys for the Debtors and Debtors in Possession Effective as of June 4, 2023* [Docket No. 481] (the “First Supplemental Declaration” and together with the Original Declaration, the “Prior Declarations”).

7. I submit this Second Supplemental Declaration in support of the Application and to supplement the disclosures set forth in the Prior Declarations in accordance with Bankruptcy Rules 2014(a) and 2016(b) and as required by the Retention Order. Except as otherwise indicated in this Second Supplemental Declaration, all facts stated in this Second Supplemental Declaration are based upon my personal knowledge of Kirkland’s practices and Kirkland’s representation of the Debtors and information learned from my review of relevant documents and information supplied to me by other parties, including partners or employees of Kirkland. No one individual at Kirkland has personal knowledge of all of the facts set forth in this Second Supplemental Declaration.

Additional Disclosures

8. As set forth in the Prior Declarations and herein, Kirkland in the past may have represented, may currently represent, and likely in the future will represent, entities that may be

parties in interest in these chapter 11 cases in connection with matters unrelated (except as otherwise disclosed in the Prior Declarations and herein) to the Debtors and these chapter 11 cases.

9. This Second Supplemental Declaration makes certain additional disclosures. As I stated in the Prior Declarations, Kirkland has searched its electronic database of representations for connections to parties in interest in these chapter 11 cases. Since the Petition Date, Kirkland has updated those conflicts searches and has searched additional parties as Kirkland became aware of additional parties in interest in these chapter 11 cases. In addition to the entities searched and disclosed in the Prior Declarations, Kirkland searched its electronic database for the entities listed on **Schedule 1**, attached hereto. The following is a list of the additional categories that Kirkland has searched:³

<u>Schedule</u>	<u>Category</u>
1(a)	Contract Counterparties
1(b)	Debtor Professionals
1(c)	Landlords
1(d)	Litigation Counterparties
1(e)	M&A Counterparties
1(f)	Non-Debtor Professionals
1(g)	Ordinary Course Professionals
1(h)	Taxing Authorities

10. I have included the results of Kirkland's conflicts searches of the entities included in the above-listed categories on **Schedule 2** hereto.⁴ In addition, Kirkland re-ran searches in its

³ Kirkland's inclusion of parties in the following schedules is solely to illustrate Kirkland's conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

⁴ As referenced in **Schedule 2** and **Schedule 3**, the term "current" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2** and **Schedule 3**, the term "former" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted between 12 and 36 months preceding the Petition Date. As referenced in **Schedule 2** and **Schedule 3**, the term "closed" means an entity listed as a client in Kirkland's conflicts search system to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. Whether an actual client relationship exists can only be determined by reference to the documents governing Kirkland's representation rather than its potential listing in Kirkland's conflicts

electronic database for the entities that were previously reviewed in the Prior Declarations. The results of Kirkland's conflict searches from the entities that were re-run are listed on Schedule 3.

All current and prior representations of the parties identified on Schedule 2 and Schedule 3 are in matters unrelated to the Debtors and these chapter 11 cases. None of the representations set forth on Schedule 2 and Schedule 3 are materially adverse to the interests of the Debtors' estates. Moreover, pursuant to section 327(c) of the Bankruptcy Code, Kirkland is not disqualified from acting as the Debtors' counsel merely because it represents certain of the Debtors' creditors or other parties in interest in matters unrelated to these chapter 11 cases.

11. As disclosed on Schedule 2 and Schedule 3, certain parties in interest in these chapter 11 cases are current or former Kirkland clients. Kirkland has not represented, nor will Kirkland represent, any of these parties or any of their affiliates in any matter related to these chapter 11 cases. I do not believe these representations preclude Kirkland from being disinterested under the Bankruptcy Code.

12. Generally, it is Kirkland's policy to disclose entities in the capacity that they first appear in a conflicts search. For example, if an entity already has been disclosed in the Prior Declarations in one capacity (*e.g.*, a customer), and the entity appears in subsequent conflicts search in a different capacity (*e.g.*, a vendor), Kirkland does not disclose the same entity again in supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

search system. The list generated from Kirkland's conflicts search system is over-inclusive. As a general matter, Kirkland discloses connections with "former" or "closed" clients for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

Specific Disclosures

13. As disclosed on Schedule 2, Kirkland currently represents WeWork Inc. and various of its subsidiaries and affiliates (collectively, “WeWork”) in its bankruptcy proceedings. Certain WeWork entities are counterparties to contracts being rejected by the Debtors. Kirkland has not represented, and will not represent, the Debtors in any matters adverse to WeWork during the pendency of WeWork’s bankruptcy proceedings. Similarly, Kirkland has not represented, and will not represent, WeWork in any matters adverse to the Debtors during the pendency of these chapter 11 cases. I do not believe that Kirkland’s current representation of WeWork precludes Kirkland from meeting the disinterestedness standard under the Bankruptcy Code.

Confidential M&A Parties

14. The Debtors were in discussions with certain parties regarding potential M&A transactions regarding the Debtors and their businesses. Due to the inherently competitive nature of this process, it was imperative that the identities of these potential counterparties remained confidential and therefore were not disclosed publicly. Since that time, the identities of certain of these counterparties have been publicly disclosed as a result of the Debtors’ sale process. The results of Kirkland’s conflicts searches for such counterparties are included in Schedule 2 attached hereto.

15. With respect to the potential counterparties that have not been publicly disclosed, the Debtors have disclosed to the United States Trustee for the District of New Jersey the identities of such potential counterparties and Kirkland’s connections to such potential counterparties, and Kirkland believes such disclosure is sufficient and reasonable under the circumstances and at this time. However, should the Court request disclosure of the identities of the non-public potential counterparties, the Debtors are prepared to file with the Court under seal a version of this Second Supplemental Declaration that contains a schedule of the non-public potential counterparties and

Kirkland's connections to such non-public potential counterparties. For the avoidance of doubt, Kirkland will not represent any of the non-public potential counterparties in connection with any matter in these chapter 11 cases.

Affirmative Statement of Disinterestedness

16. Based on the conflicts searches conducted to date and described herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) Kirkland is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code and does not hold or represent an interest adverse to the Debtors' estates, and (b) Kirkland has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Prior Declarations and herein.

17. Kirkland will continue to review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Kirkland will use reasonable efforts to identify such further developments and will promptly file an additional supplemental declaration, as required by Bankruptcy Rule 2014(a).

[Remainder of page intentionally left blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 22, 2023

Respectfully submitted,

/s/ Christopher Marcus

Christopher Marcus
as President of Christopher Marcus, P.C., as
Partner of Kirkland & Ellis LLP; and as Partner
of Kirkland & Ellis International LLP

SCHEDULE 1

List of Schedules

<u>Schedule</u>	<u>Category</u>
1(a)	Contract Counterparties
1(b)	Debtor Professionals
1(c)	Landlord
1(d)	Litigation Counterparties
1(e)	M&A Counterparties
1(f)	Non-Debtor Professionals
1(g)	Ordinary Course Professionals
1(h)	Taxing Authorities

SCHEDEULE 1(a)

Contract Counterparties

Microsoft Corp.
Seacoast National Bank
Sirius XM Connected Vehicle Services Inc.
Trexquant Investment LP
WeWork Inc.

SCHEDEULE 1(b)

Debtor Professionals

M3 Advisory Partners LP

SCHEDULE 1(c)

Landlord

Mapletree US Management LLC
SI POR02 ABS LLC

SCHEDULE 1(d)

Litigation Counterparties

Ganchozo, Cinthia
Portillo, Sergio

SCHEDEULE 1(e)

M&A Counterparties

Brookfield Infrastructure Partners LP
Cologix Canada Inc.
Phoenix Data Center Holdings LLC

SCHEDULE 1(f)

Non-Debtor Professionals

Brach Eichler LLC
Choate Hall & Stewart LLP
Doshi Legal Group PC
Jennings Haug Keleher McLeod Law Firm
Kleinberg, Kaplan, Wolff & Cohen PC
Levitt & Slafkes PC
Locke Lord LLP
Munger, Tolles & Olson LLP
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Reed Smith LLP
Sillis Cummis & Gross PC
Singer & Levick PC
Spilman Thomas & Battle PLLC
Winston & Strawn LLP

SCHEDEULE 1(g)

Ordinary Course Professionals

Haynes and Boone LLP

SCHEDULE 1(h)

Taxing Authorities

Tarrant, County of (TX) Taxing Authority

SCHEDULE 2

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
	WeWork Construction LLC	Current
	Wework Cos. Partner LLC	Current
	WeWork Denmark ApS	Current
	WeWork France SAS	Current
	WeWork Germany GmbH	Current
	WeWork Greater China Holding Company B.V.	Current
	WeWork Gulf I FZ-LLC	Current
	WeWork Holding (Thailand) Company Limited	Current
	WeWork Holdings LLC	Current
	WeWork Inc.	Current
	WeWork India Management Private Limited	Current
	WeWork Interco LLC	Current
	WeWork International Limited	Current
	WeWork Israel Ltd.	Current
	WeWork Italy S.R.L.	Current
	WeWork Japan GK	Current
	WeWork Korea Yuhan Hoesa	Current
	WeWork LA LLC	Current
	WeWork Labs Entity LLC	Current
	WeWork Little West 12th LLC	Current
	WeWork Magazine LLC	Current
	WeWork Malaysia Sdn. Bhd.	Current
	WeWork Middle East DWTC FZE	Current
	WeWork Middle East Gazelle Limited	Current
	WeWork Middle East Holdings B.V.	Current
	WeWork Netherlands B.V.	Current
	WeWork New Zealand	Current
	WeWork New Zealand Holdco B.V.	Current
	WeWork Norway AS	Current
	WeWork Paris I Tenant SAS	Current
	WeWork Paris II Tenant SAS	Current
	WeWork Paris II Tenant SAS - Sucursal Em Portugal [branch]	Current
	WeWork Paris III Tenant SAS	Current
	WeWork Paris IV Tenant SAS	Current
	WeWork Peru Management S.R.L.	Current
	WeWork Peru S.R.L.	Current
	WeWork Poland sp. z o.o.	Current
	WeWork Real Estate LLC	Current

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
	WeWork Rus LLC	Current
	WeWork Saudi Arabia Limited	Current
	WeWork Seoul 1-ho Yuhan Hoesa	Current
	WeWork Seoul 2-ho Yuhan Hoesa	Current
	WeWork Seoul 3-ho Yuhan Hoesa	Current
	WeWork Seoul 4-ho Yuhan Hoesa	Current
	WeWork Seoul 5-ho Yuhan Hoesa	Current
	WeWork Services LLC	Current
	WeWork Singapore Pte. Ltd.	Current
	WeWork Space Services Inc.	Current
	WeWork Space Services LLC	Current
	WeWork Technology Israel Ltd.	Current
	WeWork Uruguay S.R.L.	Current
	WeWork Vietnam Limited	Current
	WeWork Wellness LLC	Current
	WeWork Workplace LLC	Current

SCHEDULE 3

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
Ariba Inc. SAP SAP America Inc.	SAP SE	Closed
AXA XL - Professional Insurance AXA XL Specialty Insurance Co.	AXA European Infrastructure Fund SA	Current
Bain Capital Credit LP	BCPE Diamond Investor LP	Current
BMS Group Ltd.	Preservation Capital Partners Co-Invest GP Limited	Current
HM Revenue & Customs	Secondment to His Majesty's Courts & Tribunals Service	Current
Kurtzman Carson Consultants LLC	GCP SecureSpace Development Partners LP	Current
PNC Bank	PNC Bank NA SP Capital Partners LLC	Current Current
Salesloft - Platform Xactly Corp.	Vista Credit Strategic Lending Corp. Vista Equity Partners Fund VIII LP	Current Current
Vision Service Plan	Vision Service Plan	Current